

108TH CONGRESS  
1ST SESSION

# H. R. 1013

To amend the Federal Power Act to provide for alternative conditions and alternative fishways in hydroelectric dam licenses, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 27, 2003

Mr. RADANOVICH (for himself, Mr. HASTINGS of Washington, and Mr. WALDEN of Oregon) introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To amend the Federal Power Act to provide for alternative conditions and alternative fishways in hydroelectric dam licenses, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. ALTERNATIVE CONDITIONS AND FISHWAYS.**

4       (a) ALTERNATIVE MANDATORY CONDITIONS.—Sec-  
5       tion 4 of the Federal Power Act (16 U.S.C. 797) is  
6       amended by adding at the end the following:

7       “(h)(1) Whenever any person applies for a license for  
8       any project works within any reservation of the United  
9       States, and the Secretary of the department under whose

1 supervision such reservation falls (referred to in this sub-  
2 section as ‘the Secretary’) deems a condition to such li-  
3 cense to be necessary under the first proviso of subsection  
4 (e), the license applicant may propose an alternative condi-  
5 tion. The license applicant shall be entitled to a determina-  
6 tion on the record after opportunity for an agency trial-  
7 type hearing of any disputed issues of material fact.

8 “(2) Notwithstanding the first proviso of subsection  
9 (e), the Secretary shall accept the proposed alternative  
10 condition referred to in paragraph (1), and the Commis-  
11 sion shall include in the license such alternative condition,  
12 if the Secretary determines, based on substantial evidence  
13 provided by the license applicant that such alternative con-  
14 dition—

15 “(A) provides for the adequate protection and  
16 utilization for the reservation; and

17 “(B) will either—

18 “(i) cost less to implement, or

19 “(ii) result in improved operation of the  
20 project works for electricity production, as com-  
21 pared to the condition initially deemed nec-  
22 essary by the Secretary.

23 “(3) The Secretary shall submit into the public  
24 record of the Commission proceeding with any condition  
25 under subsection (e) or alternative condition it accepts

1 under this subsection a written statement explaining the  
2 basis for such condition, and reason for not accepting any  
3 alternative condition under this subsection. The written  
4 statement must demonstrate that the Secretary gave equal  
5 consideration to the effects of the condition adopted and  
6 alternatives not accepted on energy supply, distribution,  
7 cost, and use, flood control, navigation, drinking, irriga-  
8 tion, and recreational water supply, and air quality, in ad-  
9 dition to the preservation of other aspects of environ-  
10 mental quality, based on such information as may be avail-  
11 able to the Secretary, including information voluntarily  
12 provided in a timely manner by the applicant and others.  
13 The Secretary shall also submit, together with the afore-  
14 mentioned written statement, all studies, data, and other  
15 factual information available to the Secretary and relevant  
16 to the Secretary's decision.

17 “(4) Nothing in this subsection shall prohibit other  
18 interested parties from proposing alternative conditions.

19 “(5) If the Secretary does not accept an applicant's  
20 alternative condition under this subsection, and the Com-  
21 mission finds that the Secretary's condition would be in-  
22 consistent with the purposes and requirements of this  
23 Part, or other applicable law, the Commission may refer  
24 the dispute to the Commission's Dispute Resolution Serv-  
25 ice. The Dispute Resolution Service shall consult with the

1 Secretary and the Commission and issue a non-binding ad-  
 2 visory within 90 days. The Secretary may accept the Dis-  
 3 pute Resolution Service advisory unless the Secretary  
 4 finds that the recommendation will not adequately protect  
 5 the reservation. The Secretary shall submit the advisory  
 6 and the Secretary’s final written determination into the  
 7 record of the Commission proceeding.”.

8 (b) ALTERNATIVE FISHWAYS.—Section 18 of the  
 9 Federal Power Act (16 U.S.C. 811) is amended as follows:

10 (1) By inserting “(a)” before the first sentence.

11 (2) By adding at the end the following:

12 “(b)(1) Whenever the Secretary of the Interior or the  
 13 Secretary of Commerce prescribes a fishway under this  
 14 section, the license applicant or the licensee may propose  
 15 an alternative to such prescription to construct, maintain,  
 16 or operate a fishway. The license applicant shall be entitled  
 17 to a determination on the record after opportunity for an  
 18 agency trial-type hearing of any disputed issues of mate-  
 19 rial fact.

20 “(2) Notwithstanding subsection (a), the Secretary of  
 21 the Interior or the Secretary of Commerce, as appropriate,  
 22 shall accept and prescribe, and the Commission shall re-  
 23 quire, the proposed alternative referred to in paragraph  
 24 (1) if the Secretary of the appropriate department deter-

1 mines, based on substantial evidence provided by the li-  
2 censee, that the alternative—

3 “(A) will be no less protective of the fish re-  
4 sources than the fishway initially prescribed by the  
5 Secretary; and

6 “(B) will either—

7 “(i) cost less to implement, or

8 “(ii) result in improved operation of the  
9 project works for electricity production, as com-  
10 pared to the fishway initially prescribed by the  
11 Secretary.

12 “(3) The Secretary concerned shall submit into the  
13 public record of the Commission proceeding with any pre-  
14 scription under subsection (a) or alternative prescription  
15 it accepts under this subsection a written statement ex-  
16 plaining the basis for such prescription, and reason for  
17 not accepting any alternative prescription under this sub-  
18 section. The written statement must demonstrate that the  
19 Secretary gave equal consideration to the effects of the  
20 prescription adopted or alternative not accepted on energy  
21 supply, distribution, cost, and use, flood control, naviga-  
22 tion, drinking, irrigation, and recreational water supply,  
23 and air quality, in addition to the preservation of other  
24 aspects of environmental quality, based on such informa-  
25 tion as may be available to the Secretary, including infor-

1 mation voluntarily provided in a timely manner by the ap-  
2 plicant and others. The Secretary shall also submit, to-  
3 gether with the aforementioned written statement, all  
4 studies, data, and other factual information available to  
5 the Secretary and relevant to the Secretary's decision.

6       “(4) Nothing in this subsection shall prohibit other  
7 interested parties from proposing alternative prescrip-  
8 tions.

9       “(5) If the Secretary does not accept an applicant's  
10 alternative prescription under this subsection, and the  
11 Commission finds that the Secretary's prescription would  
12 be inconsistent with the purposes and requirements of this  
13 Part, or other applicable law, the Commission may refer  
14 the dispute to the Commission's Dispute Resolution Serv-  
15 ice. The Dispute Resolution Service shall consult with the  
16 Secretary and the Commission and issue a non-binding ad-  
17 visory within 90 days. The Secretary may accept the Dis-  
18 pute Resolution Service advisory unless the Secretary  
19 finds that the recommendation will not adequately protect  
20 the fish resources. The Secretary shall submit the advisory  
21 and the Secretary's final written determination into the  
22 record of the Commission proceeding.”.

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